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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/888,473	06/25/2001	Jeffrey Allen Jones	AUS920010398US1	8699

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EXAMINER	
NGUYEN, DUSTIN	
ART UNIT	PAPER NUMBER
2454	

NOTIFICATION DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ptonotifs@yeeiplaw.com

Office Action Summary	Application No.	Applicant(s)	
	09/888,473	JONES ET AL.	
	Examiner	Art Unit	
	DUSTIN NGUYEN	2454	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *28 October 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,4-9 and 12-19* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,4-9 and 12-19* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1, 4-9 and 12-19 are presented for examination.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 18 is rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter. It appears claim 18 would reasonably be interpreted by one of ordinary skill as a system of software per se, failing to fall within a statutory category of invention. The claim recites a system comprises a first component of the first machine, and a second component of the first machine, in which Applicants' disclosure contains no explicit and deliberate definition for the terms "first component" and "second component", and in the context of the disclosure and claims in question, one of ordinary skill would reasonably interpret the components as software. As such, the system of software alone is not a machine, it is clearly not a process, manufacture nor composition of matter. Applicant's argued that the rejection is in error since claim 18 recites a server, a client machine and a first machine, but these components belong to the computer network, not the system that comprises first and second components as claimed.

Note: As per claims 17 and 19, they are not rejected under 35 U.S.C. §101 since the specification discloses communication links to network computers may be provided through modem and network adapter [e.g. Examiner interprets the receiver recited in the claim as modem or network adapter, i.e. a hardware device]. Therefore, the claims are not rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter, i.e. software per se.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 7, 8, 15, 16, 18 and 19 are rejected under 35 U.S.C. 102(e) as being anticipated by Chapweske [US Patent No 7,277,950].

5. As per claim 7, Chapweske discloses the invention as claimed including a method for distributing information in a computer network [i.e. data transfer across a communication network] [Abstract], the method comprising:

requesting, by a first machine, one of a plurality of pieces of an electronic file from a server [i.e. receiving a first file download request from a first computer], wherein the electronic

file is stored in the server [i.e. storing at a starting computer a file], and wherein the first machine sends a request for the one of the plurality of pieces to the server [claim 138];

receiving, by the first machine, the requested file piece from the server [i.e. downloading, from the starting computer, a first portion of the file to the first computer] [claim 138];

receiving, by the first machine, a request for another file piece from a second machine [i.e. issuing a request from the second computer to the first computer] [claim 138], wherein the request for said another file piece is conditionally redirected from the server to the first machine based upon whether the server has previously provided said another file piece to the first machine [i.e. identifying which of the peer computers have previously requested and downloaded the data, and the requesting node will then itself directly request file across a communication network from the selected nodes] [claim 25; col 11, lines 60-63; and col 14, lines 1-4]; and then

sending, by the first machine, said another file piece to said second machine [i.e. complete download file] [claim 139].

6. As per claim 8, it is rejected for similar reasons as stated above in claim 7. Furthermore, Chapweske discloses receiving, by the first machine and without further request of the requested file piece by the first machine, the requested file piece from a second machine containing a copy of said file piece in lieu of receiving the requested file piece from the server, the copy of said file piece on the second machine being the result of a previous request for the file piece from the second machine to the server and receipt of the file piece from the server to the second machine [

i.e. the push model, the starting node directly messages the selected mesh nodes across a communication network to start transferring file to the requesting node] [col 11, lines 62-67; and col 14, lines 4-8].

7. As per claims 15 and 16, they are program product of claims 7 and 8, they are rejected for similar reasons as stated above in claims 7 and 8.

8. As per claims 18 and 19, they are program product of claims 7 and 8, they are rejected for similar reasons as stated above in claims 7 and 8.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

10. Claims 1, 9 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chapweske [US Patent No 7,277,950], in view of Teodosiu et al. [US Patent Application No 2005/0198296].

11. As per claim 1, Chapweske discloses the invention substantially as claimed including a method for distributing information in a computer network [i.e. data transfer across a communication network] [Abstract], the method comprising:

dividing, by a master server, an electronic file into a plurality of file pieces [i.e. file portions] [claim 138; and col 12, lines 51-56], wherein the server maintains a complete copy of the electronic file [i.e. storing at a starting computer a file] [claim 138; and col 12, lines 20-25];

downloading, by the master server, all of said file pieces to a plurality of client machines [i.e. sending first and second portions of file to first and second computers] [claim 1], wherein the client machines function as peer-to-peer servers for other client machines requesting said file pieces [col 11, lines 24-32], wherein each peer-to-peer server stores a unique file piece of said file pieces which is not stored on other of the peer-to-peer servers [i.e. the second portion includes at least some of the data not send to the first computer] [claim 1];

receiving, by the master server, a request for a file piece from a first client machine and downloading, by the master server, the requested file piece to the first client machine [claim 1]; and

receiving, by the master server, a request for said file piece from a second client machine [i.e. request node requests file] [Figure 2; and col 10, lines 65-col 11, lines 1]; and

if said file piece requested from the second client machine has previously been downloaded by the master server to the first client machine responsive to the request for said file piece from the first client machine, redirecting the request of the second client machine to the

first client machine, wherein the redirecting step is performed by the master server [col 11, lines 60-67; and col 14, lines 1-8].

Chapweske does not specifically disclose

if said file piece requested from the second client machine has not previously been downloaded by the master server to the first client machine, processing the request for said file piece from the second client machine by the master server in lieu of redirecting the request of the second client machine to the first client machine.

Teodosiu discloses

if said file piece requested from the second client machine has not previously been downloaded by the master server to the first client machine, processing the request for said file piece from the second client machine by the master server in lieu of redirecting the request of the second client machine to the first client machine [i.e. download directly from server] [Figure 2; and paragraphs 0044 and 0061].

It would have been obvious to combine to a person skill in the art at the time the invention was made to combine the teaching of Chapweske and the teaching of Teodosiu in order to provide complete data to client without any error or transfer interruption.

12. As per claims 9 and 17, they are rejected for similar reasons as stated above in claim 1.

13. Claims 4-6 and 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chapweske [US Patent No 7,277,950], in view of Teodosiu et al. [US Patent Application No 2005/0198296], and further in view of Boykin [US Patent Application No 2002/0078461].

14. As per claim 4, it is rejected for similar reasons as stated above in claim 1. Furthermore, Chapweske and Teokosiu do not specifically disclose receiving a request for a file piece stored in a first peer-to-peer server which is no longer connected to the computer network [i.e. some servers might not respond]; and removing the first peer-to-peer server from a list of available peer-to-peer servers. Boykin discloses receiving a request for a file piece stored in a first peer-to-peer server which is no longer connected to the computer network [i.e. some servers might not respond]; and removing the first peer-to-peer server from a list of available peer-to-peer servers [i.e. dropped from the list] [paragraph 0035]. It would have been obvious to a person skill in the art at the time the invention was made to combine the teaching of Chapweske, Teokosiu and the teaching of Boykin in order to allow a client to efficiently download a file from the distributed network by putting together fragments of the file obtained from different servers that maintain partial or complete copies of the desired file [Boykin, paragraph 0036].

15. As per claim 5, Boykin discloses sending a digest for a file piece to each client machine, which has received that file piece [i.e. the message digest] [Figure 5; and paragraph 0033] and determining whether said given file piece is corrupted using the digest [i.e. the message digest can be used to guarantee the integrity of the contents of the segments] [paragraph 0034].

16. As per claim 6, Boykin discloses receiving a message from a client, wherein the message indicates that a peer-to-peer server has corrupted said given file piece, disconnecting the peer-to-peer server responsible for corrupting said file piece [i.e. if the connection is dropped] [paragraphs 0015 and 0035], and retransmitting said given file piece to said client, wherein the retransmitted file piece is free of any corrupting content [i.e. start the request for that segment again] [paragraphs 0035 and 0036].

17. As per claims 12-14, they are program product claimed of claims 4-6, they are rejected for similar reasons as stated above in claims 4-6.

18. Applicant's arguments with respect to claims 1, 4-9 and 12-19 have been considered but are moot in view of the new ground(s) of rejection.

19. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dustin Nguyen whose telephone number is (571) 272-3971. The examiner can normally be reached on flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Flynn can be reached at (571) 272-1915. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Dustin Nguyen/
Primary Examiner, Art Unit 2454